

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JERMAINE MCLEAN,**

**Plaintiff,**

**v.**

**9:16-CV-0227 (BKS/TWD)**

**BRANDON SMITH, *Superintendent,*  
*Greene Correctional Facility, et al.,***

**Defendants.**

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**Appearances:**

Jermaine McLean  
08-A-0386  
Coxsackie Correctional Facility  
P.O. Box 999  
Coxsackie, NY 12051  
Plaintiff, pro se

Christopher J. Hummel, Esq.  
Hon. Eric T. Schneiderman  
Office of New York State Attorney General  
The Capitol  
Albany, NY 12224  
Attorney for Defendants

**Hon. Brenda K. Sannes, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff Jermaine McLean, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Greene Correctional Facility. Dkt. No. 1. An Answer was filed on May 31, 2016 (Dkt. No. 14), and on June 1, 2016, the Court issued a Mandatory Pretrial Discovery and Scheduling Order (Dkt. No. 15). On August 24, 2016, mail that the Court sent to Plaintiff at Coxsackie Correctional Facility was

returned as undeliverable with a notation that Plaintiff had been released from custody. Dkt. No. 18. On October 27, 2016, Defendants filed a motion to dismiss under Fed. R. Civ. P. 37 and 41 for failure to prosecute and as a sanction for failing to appear for deposition. Dkt. No. 19. Plaintiff did not file a response to Defendants' motion and all mail sent to the address Plaintiff provided to Cossackie upon his release has been returned to the Court as undeliverable. Dkt. Nos. 22, 23, 25 and 26. This matter was assigned to United States Magistrate Judge Thérèse Wiley Dancks who, on May 1, 2017, issued a Report-Recommendation and Order recommending that Defendants' motion to dismiss be granted and that Plaintiff's complaint dismissed without prejudice. Dkt. No. 24. Magistrate Judge Dancks advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. Dkt. No. 24, p. 10. No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Report-Recommendation is adopted in its entirety.

For these reasons, it is

**ORDERED** that the Report-Recommendation (Dkt. No. 24) is **ADOPTED** in its entirety; and it is further


**ORDERED** that Defendants' motion to dismiss (Dkt. No. 19) is **GRANTED** and Plaintiff's complaint is **DISMISSED** without prejudice; and it is further

**ORDERED** that the Clerk serve a copy of this Order upon the parties in accordance with

the Local Rules.

**IT IS SO ORDERED.**

**Dated: May 26, 2017**

  
Brenda K. Sannes  
U.S. District Judge